

DEPARTMENT OF TAXATION AND FINANCE

MEMORANDUM

El-Tronics, Inc.

TO: Commissioner Murphy

OFFICE Corporation Tax

FROM: Mr. Doran

DATE August 29, 1967

SUBJECT: El-Tronics, Inc.

Attached for Commission approval is credit of \$5,286.12 based on reduction in license fee assessment.

This is the case that Harold W. Wolfram of the law firm of Burke & Burke wrote you about in March 1966. Your reply was dated March 8, 1966.

In February 1966, the license fee assessment under Article 9, Section 181, was increased from \$83.95 to \$18,445.74 due merely to change in capitalization from par value to no par value stock in conjunction with reorganization under Chapter 10 of the Bankruptcy Act.

The \$18,445.74 assessment was somewhat excessive because the taxpayer failed to properly classify investment and subsidiary capital. In addition, business receipts apparently were inaccurately allocated in computing business capital. Although the inaccuracy of the business allocation cannot be definitely substantiated, there is indication that receipts from shipments from New York to New York are overstated.

In view of the poor financial condition of the taxpayer and the excessive fee in proportion to the 25¢ stated value of the issued no par value stock, we have adjusted the allocation percent so as to give the taxpayer the benefit of any doubt.

The corporation currently is not operating in the state.


Director

Attachment

EAD/o'n

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
BOARD OF CONFEREES - CORPORATION TAX BUREAU

In the Matter of the Application of :

EL TRONICS, INC.

:

HEARING CASE NO. 6191

for revision or refund of license fee :
assessed under Section 181 of the Tax
Law. :

On February 15, 1966 the following license fee was assessed based on form CT-3 for the calendar year 1962:

No par value shares of stock	1,949,453
Allocation percentage	15.77%
No par shares allocated to New York	307,429
Tax at 6¢ per share	\$18,445.74
Prior fee	83.96
Balance due	\$18,361.78

Application for revision or refund was filed and a formal hearing was held in Albany on January 19, 1967 with the taxpayer being represented by Mr. Stuart J. Myers, President, and David S. Williams, Esq. of Whalen, McNamee, Creble & Nichols, 75 State Street, Albany, New York.

The taxpayer was incorporated in Pennsylvania on November 3, 1933 and was authorized to do business in New York State on September 16, 1958.

At the hearing, Mr. Myers testified that the taxpayer was reorganized in 1960 under Chapter 10 of the Bankruptcy Act. On November 9, 1960 the certificate of incorporation was amended and the authorized capital stock of the taxpayer was changed to 4,000,000 shares of no par value having a stated value of \$1,000,000.00. At that time the taxpayer's attorney in Philadelphia was opposed to issuing no par shares, but for some reason the S. E. C. or Trustees in Reorganization wanted no par shares.

Mr. Myers in his letter of March 31, 1967 has given a breakdown of items 6 and 7 of the balance sheet for the year 1962 which was requested at the hearing. The information indicates that the taxpayer had investment capital which was not reflected in the allocation percentage used in computing the license fee.

Mr. Myers also stated in his letter that the business allocation may have been miscalculated because of certain inventories that were maintained in Warren, Pennsylvania, but treated as if they were maintained in Jamestown, New York.

In a letter dated May 29, 1967 Mr. Myers states in part as follows:

"We have received the information from Lybrand, Ross Bros. and Montgomery, but I must admit that the picture is still rather confused for the year 1962.

During a great deal of the time that our fuse products were produced in Jamestown, New York, they were transferred as soon as manufactured to our inventory here in Warren and could have been treated as a New York State sale at that time. Later, when they were actually

invoiced to third parties from our Warren, Pennsylvania office, this could have resulted in a duplication of the sales value as reported to us. While this is not readily substantiated, may I say that if we do assume this to be the case, our New York State percentage would drop from 18.2% to 9.2% and the business allocation percentage would drop from 16.2% to 13.2%. This would decrease our taxes from \$18,400.00 to approximately \$15,000.00 and if you can find further reduction using the data we formerly sent you which would bring our bill down to the neighborhood of \$10,000.00, I believe I could convince our Board to pay that size tax, even though completely unreasonable, rather than litigate this matter.

I believe I am honest when I say that our Board feels that someone has to re-litigate this matter again to the Supreme Court and see if our circumstances do not represent such an unreasonable and unjust case that the law would be declared unconstitutional. Being frank, however, our corporation is in no position to spend large amounts in litigation and thus we naturally would prefer to settle this matter amicably if the figure would be less than the litigation costs, and if we could be given a reasonable length of time over which to pay the tax.

We have fully withdrawn from any manufacturing activities in New York State, but being only 10 miles from the border we would like to feel we could re-enter with the business climate no less fair than Pennsylvania."

Under the circumstances in this matter this Board believes that it is in the interest of the state to give the taxpayer any benefit of the doubt and accept the corrections in the receipts factor as suggested in Mr. Myers' letter of May 29, 1967. That adjustment and the zero allocation to New York of investment and subsidiary capitals (See yellow sheet attached to license fee) result in the following corrected license fee:

No par value shares of stock	1,949,453
Corrected allocation percentage	11.25069%
No par shares allocated to New York	219,327
Tax at 6¢ per share	13,159.62
Prior fee	83.96
Balance due	\$13,075.66

/s/ W. F. SULLIVAN
Chairman

/s/ D. H. GILHOOLY

Approved

/s/ J. J. GENEVICH

E. A. DORAN

WFS:MB
8/18/67

APPROVED JAMES R. MACDUFF 9-2067

APPROVED: WALTER MACLYN CONLON 19 Sept. '67

O.K. JHM
9-22-67